



Issue: *County Authority in Texas as Compared to Other States*

The Hill Country Alliance was formed to promote responsible and planned growth in a region that is under tremendous pressure to urbanize. Some valid regional planning initiatives are underway such as Envision Central Texas and the Regional Water Quality Protection Plan but little implementation can occur because few tools exist to guide and manage land-use and development in the unincorporated areas of Texas counties.

The mission of HCA is *“to create an expanding network of groups throughout a multi-county region of Central Texas, with the long-term objective of preserving open spaces, water supply, water quality, and the unique character of the Texas Hill Country.”*

Natural resources in the Hill Country are extremely fragile. The Regional Water Quality Protection Plan points to several valid scientific studies that indicate significant water quality impacts begin to occur at between five and eighteen percent (5-18%) impervious cover, however there is no tool available to limit density or impervious cover at all.

In order to help evaluate and understand County Authority in Texas, HCA posed the following questions to the Environmental Law Clinic at the University of Texas:

Questions

1. Do counties in Arizona, California, Colorado, Florida, New Mexico, Oregon, and Washington have authority to enact zoning and land use regulations and assess impact fees?
2. How does county authority in these states compare to authority granted to Texas counties?

Short Answer

1. Counties in Arizona, California, Colorado, Florida, New Mexico, Oregon, and Washington are granted

broad authority to engage in zoning and land use regulations. With regard to impact fees, counties in New Mexico and Washington have some authority to assess fees for new development, though this authority is generally limited to certain capital improvements defined by state law. Furthermore, none of the abovementioned states grant counties broad authority to assess impact fees for environmental effects.

2. County authority in Arizona, California, Colorado, Florida, New Mexico, Oregon, and Washington is especially broad in comparison to county authority in Texas, where counties have no authority to implement zoning regulations.

See “County Authority for Zoning and Assessing Impact Fees in Selected States” chart on the following page.

Analysis

I. Arizona

Under Arizona law, the board of supervisors of a county is responsible for conserving and promoting public health, safety, convenience and welfare, and it must plan for future growth and improvement of its area of jurisdiction. To do so, the county must form a planning and zoning commission to consult with and advise the board on matters of planning, zoning, and subdivision platting and to enforce rules, regulations, and ordinances that may apply to the development of its area of jurisdiction. *See* Ariz. Rev. Stat. § 11-802 (2007) (describing the county’s role in planning and zoning). The county’s zoning commission is required to:

...recommend to the board a comprehensive plan of the area of jurisdiction of the county. The comprehensive plan

County Authority for Zoning and Assessing Impact Fees in Selected States

State	Zoning	Assessing Impact Fees
Texas	Counties do not have authority to enact zoning regulations. Tex. Local Gov't Code § 232.101 (2007).	A governmental entity or political subdivision may not impose an impact fee unless specifically authorized by state law. Impact fees may be imposed only to pay for capital improvements or facility expansions. § 395.012.
Arizona	Counties have the authority to enact zoning regulations as part of a comprehensive plan. Ariz. Rev. Stat. § 11-802 (2007).	Municipalities have authority to assess impact fees for new development; counties do not. Ariz. Rev. Stat. § 9-463.05 (2007).
Oregon	Counties must adopt a comprehensive plan, and they may enact zoning regulations to implement its goals. Or. Rev. Stat. § 215.050.	The county may prescribe fees as necessary or convenient to carrying out the goals of its comprehensive plan. Or. Rev. Stat. § 215.110.
Colorado	Counties have the authority to enact planning and zoning regulations applicable to all unincorporated territories within such county. Colo. Rev. Stat. § 30-28-111 (2007).	Local governments may assess impact fees for capital facilities needed to serve new development. Counties do not have authority to assess impact fees. Colo. Rev. Stat. § 29-20-104.5.
Florida	Counties have the authority to establish and enforce zoning regulations as part of a comprehensive plan. Fla. Stat. § 125.01 (2007).	Counties and municipalities have the authority to assess impact fees for new development pursuant to the Florida Impact Fee Act. Fla. Stat. § 163.31801 (2007).
New Mexico	A county may engage in county planning and zoning within its jurisdiction. N.M. Stat. Ann. § 4-57-2 (2007).	Counties and municipalities may impose impact fees only when specifically authorized by the Development Fees Act. The DFA allows impact fees to be charged for funding the costs of capital improvements attributable to new development. N.M. Stat. Ann. § 5-8-2 (2007); § 5-8-3.
Washington	Counties have the authority to engage in planning programs which may include enacting zoning regulations and other land use controls. Wash. Rev. Code Ann. § 36.70.030 (2007).	Pursuant to a comprehensive land use plan, counties have authority to assess impact fees for new development to pay a proportionate share of the cost of new facilities needed. § 82.02.050.
California	Counties and cities are responsible for adopting and administering zoning laws and regulations. Ca. Gov't Code § 65800 (2007).	Local agencies may impose development fees for new development. Ca. Gov't Code § 66001 (2007).

shall be developed so as to conserve the natural resources of the county, to ensure efficient expenditure of public funds, and to promote the health, safety, convenience, and general welfare of the public. Such comprehensive plan may include but not be limited to, among other things, studies and recommendations relative to the location, character and extent of highways, railroads...public buildings, public services, schools, parks, open space, housing quality, variety and affordability, parkways, hiking and riding trails, airports, forests, wildlife areas, dams, projects affecting conservation of natural resources, air quality, water quality and floodplain zoning.

§ 11-806. A county board may then choose to adopt, amend, or extend the commission's comprehensive plan. § 11-821 (describing county planning and zoning authority). Given this authority, Arizona counties may enact a broad array of zoning regulations.

Regarding impact fees, Arizona law grants municipalities the authority to assess impact fees to offset costs of providing public services, infrastructure, improvements, engineering and architectural services, and other capital costs attributable to development. § 9-463.05. However, such authority exists specifically for cities and towns and not at the county level. *See Id.*

II. California

With regard to zoning and land use, the California legislature has declared that the adoption and administration of zoning laws, ordinances, rules and regulations is the responsibility of counties and cities. *See Cal. Gov't Code § 65800 (2007)*. California law provides that counties and cities may implement plans to take effect in such county or city, and that such entities may exercise the maximum degree of control over local zoning matters. *Id.* In particular, a county or a city may adopt ordinances that do any of the following:

- (a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.

- (b) Regulate signs and billboards.
- (c) Regulate all of the following:
 - (1) The location, height, bulk, number of stories, and size of buildings and structures.
 - (2) The size and use of lots, yards, courts, and other open spaces.
 - (3) The percentage of a lot which may be occupied by a building or structure.
 - (4) The intensity of land use.
- (d) Establish requirements for off-street parking and loading.
- (e) Establish and maintain building setback lines.
- (f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

§ 65850. California counties, therefore, are given broad discretion to enact zoning and land use regulations within their territories. *See Id.*

III. Colorado

Under Colorado law, counties have the authority to engage in planning and implement zoning regulations applicable to all unincorporated territories with such county. For example, the county planning commission of any county may:

- (1) ...make a zoning plan for zoning all or any part of the unincorporated territory within such county, including both the full text of the zoning resolution and the maps, and representing the recommendations of the commission for the regulation by districts or zones of the location, height, bulk, and size of buildings and other structures, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, access to sunlight for solar energy devices, and the uses of land for trade, industry, recreation, or other purposes.

Colo. Rev. Stat. § 30-28-111 (2007). In addition, the county planning commission may include in a zoning plan provisions that establish, regulate, and limit certain uses on or along any storm or floodwater runoff channel or basin. *See* § 30-28-111 (describing county authority as to zoning plans).

The Colorado legislature has declared it a state policy to provide for planned and orderly development within Colorado and to balance human needs with legitimate environmental concerns. Colo. Rev. Stat. 29-20-102 (2007). As such, the legislature granted broad authority to local governments to plan for and regulate land use. *Id.* For example, local governments have the authority to impose impact fees as a condition of approval of development permits. *Id.* Colorado's Local Government Land Use Control Enabling Act states:

- (1) ...a local government may impose an impact fee or other similar development charge to fund expenditures by such local government on capital facilities needed to serve new development. No impact fee or other similar development charge shall be imposed except pursuant to a schedule that is:
 - (a) Legislatively adopted;
 - (b) Generally applicable to a broad class of property; and
 - (c) Intended to defray the projected impacts on capital facilities caused by proposed development.

Colo. Rev. Stat. 29-20-104.5 (2007). Impacts on "capital facility" means any improvements related to any service that the local government is authorized to provide and that is required by a local government. *Id.* Therefore, it appears that local governments in Colorado have broad authority in imposing impact fees and may in some instances impose such fees for environmental impacts. However, it is not clear from the statute when impact fees may be imposed to compensate for environmental effects. It must also be noted that this authority is granted at the local governmental level and has not been granted to counties.

IV. Florida

Under Florida law, county power includes the power to "prepare and enforce comprehensive plans for the development of the county," and to "establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public." *See* Fla. Stat. § 125.01 (2007) (listing the powers and duties of a county). To enact zoning regulations, a county must act pursuant to the Local Government Comprehensive Planning and Development Regulation Act, which requires the adoption of a comprehensive plan and an annual review. *J.O. Townley v. Marion County*, 343 So. 2d 1312 (Fla. 1st DCA 1977). The purpose of the comprehensive plan is to promote public health, safety, comfort, good order, appearance, convenience, and to prevent the overcrowding of land and to avoid undue crowding of population. § 163.3161(3). It may also provide for future orderly development of the community and restrict the designated areas or zones to specified uses and types of buildings. § 163.3177.

V. New Mexico

New Mexico law grants its counties "such powers as are necessary and proper to carry out and promote county planning." *See* N.M. Stat. Ann. § 4-57-2 (2007). Such planning includes that which is necessary for accomplishing a coordinated and harmonious development of the county to best promote the health, safety, morals, order, convenience, and general welfare. *Id.* With regard to zoning, a county or municipality:

Is a zoning authority and may regulate and restrict within its jurisdiction the:

- (1) height, number of stories and size of buildings and other structures;
- (2) percentage of a lot that may be occupied;
- (3) size of yards, courts and other open space;
- (4) density of population; and
- (5) location and use of buildings, structures and land for trade, industry, residence or other purposes.

§ 3-21-1 (2007). In addition, the county or municipal zoning authority may:

- (1) divide the territory under its jurisdiction into districts of such number, shape, area and form as is necessary to carry out the purposes of section 3-21-1...
- (2) regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land in each district. All such regulations shall be uniform for each class or kind of buildings within each district, but regulation in one district may differ from regulation in another district.

Id.

Regarding the assessment of impact fees, no municipality or county may enact or impose an impact fee unless specifically authorized by the Development Fees Act. N.M. Stat. Ann. § 5-8-3 (2007). Under the Development Fees Act, impact fees may be charged by a municipality or a county on new development in order to fund or recoup the costs of capital improvements attributable to new development. § 5-8-2. Capital improvements may be necessary for facilities that are owned and operated by a municipality or county, including police and fire department buildings, water supply facilities, drainage and flood control facilities, roads, bridges, parks, recreational areas, and open space trails. *Id.* While New Mexico law grants counties the authority to assess impact fees, this authority is limited to capital improvements as defined by the Development Fees Act and does not appear to grant counties much discretion in this area. *Id.*

VI. Oregon

Oregon law grants counties the authority to establish county planning commissions. Or. Rev. Stat. § 215.020 (2005). For example, a county governing body shall:

- (1) ...adopt and may from time to time revise a comprehensive plan and zoning, subdivision, and other ordinances applicable to all of the land in the county...

- (2) zoning, subdivision or other ordinances of regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan.

§ 215.050.

The planning commissions may recommend that the governing body of a county implement certain ordinances to carry out the goals of a comprehensive plan. For example, such ordinances may provide for zoning regulations, maps showing property needed for public purposes, conservation of natural resources of the county, controlling subdivision and partition of land, and the numbering of property. § 215.110. The county may enact, amend, or repeal such ordinances in order to assist in implementing the comprehensive plan. *Id.* In addition, the county may prescribe fees as necessary or convenient to carrying out the purposes of the ordinance. *Id.*

VII. Washington

The Washington legislature has declared its intent to provide counties with the authority to regulate the physical development of a region by:

...correlating both public and private projects and coordinating their execution with respect to all subject matters utilized in developing and servicing land, all to the end of assuring the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation, and assuring maximum economies and conserving the highest degree of public health, safety, morals and welfare.

Wash. Rev. Code Ann. § 36.70.010 (2007).

Washington law grants counties, through a Planning Enabling Act, authority to create a planning agency and engage in planning programs. § 36.70.030. Two or more counties may jointly engage in a planning program for combined areas, and such planning programs may include zoning and other land use controls. *Id.*

For example, the Washington legislature has delegated to counties the authority to approve a comprehensive plan, adopt official controls, and engage in zoning.

Save Our State Park v. Board of Clallam County Comm'rs, 875 P.2d 637, 673 (1994).

In order to promote orderly growth and development, the Washington law grants counties, cities, and towns the authority to “require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development.” § 82.02.050. Such impact fees may be collected and spent only for certain public facilities and pursuant to a comprehensive land use plan adopted by a county, city, or town. *Id.* The plan shall identify deficiencies in public facilities serving existing development, additional demands created by new development, and additional public facility improvements requires to serve new development. *Id.* It does not appear that Washington counties have the authority to assess impact fees solely to compensate for environmental effects of new development, unless such environmental effects required public facility improvements. *Id.*

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